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Secretary, U.S. Air Force

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

PETER G. SEBALA,)	CIVIL NO. 04-00404 SPK-LEK
)	
Plaintiff,)	DEFENDANT'S PROPOSED FIRST
)	AMENDED FINDINGS OF FACT AND
vs.)	CONCLUSIONS OF LAW;
)	CERTIFICATE OF SERVICE
JAMES G. ROCHE, DR.,)	
SECRETARY, DEPARTMENT OF THE)	
AIR FORCE,)	TRIAL DATE: February 7, 2006
)	JUDGE: Samuel P. King
Defendants.)	
)	
)	

DEFENDANT'S PROPOSED FIRST AMENDED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Comes now James G. Roche, Secretary of the United States Department of the Air Force ("the Air Force"), by and through the United States Attorney for the District of Hawaii, and files this Findings of Fact and Conclusions of Law in accordance with the Rule 16 Scheduling Order.

PROPOSED FINDING OF FACTS

1. The Plaintiff applied and was not selected for a permanent position as a Mobile Equipment Servicer, WG-5806-06, with the 15th LRD/LGR at Hickam AFB, HI on April 7, 2003 which serves as the basis for this case. See Plaintiff's Exhibit (hereinafter PEX) 75, Tab 13; Defense Exhibit (hereinafter DEX) 218.

2. The Plaintiff was born on 27 August 1949. See PEX 75, Tab 11; DEX 200.

3. Mr. Randall Nunes hired the Plaintiff and was his supervisor for one year while the Plaintiff was employed as a temporary Mobile Equipment Servicer, WG-5806-06. The Plaintiff worked in this position was from January 2002 to January 2003.

4. Mr. Randall Nunes had observed the Plaintiff's work ethic and demeanor on a day-to-day basis for one-year period of time. Mr. Nunes had noticed instances where the Plaintiff did not demonstrate a strong work ethic and had a poor attitude towards authority. See PEX 75, Tab 28; DEX 205 and PEX 75, Tab 34; DEX 201.

5. During the period of time the Plaintiff was a temporary employee, he received one midterm feedback Air Force Form 860B documenting his performance in October 2002. His performance was documented as mediocre. See PEX 75, Tab 33; DEX 207.

6. During the period of time the Plaintiff was a temporary employee, he had at least two instances of insubordinate behavior towards authority. See PEX 75, Tab 28; DEX 205 and PEX 75, Tab 34; DEX 201 and PEX 75, Tab 8; DEX 204.

7. The Plaintiff had a trainer assigned to him when he began the temporary Mobile Equipment Servicer position. In accordance with office policy, all new employees are given trainers. See DEX 236, 237, and 238.

8. Mr. Nunes was the selecting official for the Mobile Equipment Servicer, WG-5806-06, permanent position that was announced in March 2003. See PEX 75, Tab 23; DEX 209.

9. The Plaintiff applied for the position as a Mobile Equipment Servicer, WG-5806-06, with the 15th LRD/LGR at Hickam AFB, HI. See PEX 75, Tab 25; DEX 212 and PEX 75, Tab 26 and DEX 214.

10. Mr. Nunes received the applications of the top three applicants including the Plaintiff, Mr. Christopher Vargas, and Mr. Robert McCollum. See PEX 75, Tab 26 and DEX 213, 214, and 215.

11. The Plaintiff's application included an application and resume that Mr. Nunes considered in making a hiring decision. See PEX 75, Tab 26; DEX 214.

12. Mr. Vargas supplied a resume with his application. See PEX 75, Tab 26; DEX 213. Mr. Vargas also had been employed by the Air Force and had received positive documentation of his performance evaluation. See PEX 16; DEX 222 and PEX 13; DEX 223.

13. Instead of hiring the Plaintiff, Mr. Randall Nunes hired Mr. Christopher Vargas to the aforementioned position. See PEX 75, Tab 25. This decision was based on Mr. Nunes' negative interaction with the Plaintiff and Mr. Vargas' application, resume, and previous work performance in a temporary position on Hickam AFB, HI. See PEX 75, Tab 26; DEX 213 and 214 and PEX 16; DEX 222 and PEX 13; DEX 223.

14. The Plaintiff was notified he was not selected for the position on April 7, 2003 via letter. See PEX 75, Tab 13; DEX 218. The Plaintiff then contacted Mr. Nunes for an explanation of why he was not hired. See PEX 75, Tab 9; DEX 219 and PEX 53. Mr. Nunes replied that he hired the best qualified applicant.

15. Mr. Vargas began work in the Mobile Equipment Servicer, WG-5806-06, position in May 2003. See PEX 31.

16. Mr. Nunes did not make any statement to Mr. Michael Oyadamori about selecting Mr. Vargas due to his age. Mr. Oyadamori dislikes Mr. Nunes because he has received derogatory paperwork from Mr. Nunes.

17. Mr. Nunes was the selecting official who selected the Plaintiff for the temporary Mobile Equipment Servicer, WG-5806-06 in January 2002. Mr. Nunes was also the selecting official who did not select the Plaintiff for the permanent Mobile Equipment Servicer, WG-5806-06 in April 2003. See PEX 75, Tab 13; DEX 218.

18. Plaintiff's action in this Court was filed on July 7, 2004, alleging national origin and age discrimination. The national origin claim was stipulated to be dismissed with prejudice.

CONCLUSIONS OF LAW

1. The Plaintiff has established all elements of their prima facie case by a preponderance of the evidence.

2. The Defendant has established legitimate non-discriminatory reasons for their hiring decisions regarding the Plaintiff.

3. The Plaintiff failed to establish that the Defendant's non-discriminatory reasons for their hiring decision is pretext for unlawful age discrimination.

4. As a result of the Plaintiff's failure to establish the Defendant's nondiscriminatory reasons were pretextual, the Plaintiff is not entitled to prevail. In accordance, the Plaintiff is not entitled to damages of any sort and costs shall be assessed against the Plaintiff.

DATED: February 6, 2006, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.
United States Attorney

/s/ R. Michael Burke

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vs.)	
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JAMES G. ROCHE, DR.,)	
SECRETARY, DEPARTMENT OF THE)	
AIR FORCE,)	
)	
Defendant.)	
_____)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the date and by the method of service noted below, a true and correct copy of the foregoing was served upon the following at their last known addresses:

Served by Hand-Delivery February 6, 2006

Venetia K. Carpenter-Asui, Esq.
Haseko Center
820 Mililani Street, Suite 812
Honolulu, Hawaii 96813

Attorney for Plaintiff
Peter G. Sebala

DATED: February 6, 2006, at Honolulu, Hawaii.

/s/ Myra Y. Peterson
